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OFFICE OF PETITIONS

In re Application of :
Cristiano et al. : DECISION ON APPLICATION
Application No. 09/922,490 : FOR
Filed: August 3, 2001 : PATENT TERM ADJUSTMENT
Atty Docket No. INRP:021USC1 :

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §§1.705(b)", filed March 15, 2004. Applicants request that the initial determination of patent term adjustment be corrected from zero (0) to forty-seven (47) days. The instant request was recently forwarded to the undersigned for consideration.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is forty-seven (47) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On December 19, 2003, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 0 days. On March 15, 2004,

applicants timely¹ submitted this application for patent term adjustment. Applicants state that a period of reduction of 85 days should not have been entered for their delay in filing a response to the Notice to File Missing Parts of Application mailed September 20, 2001.

The record supports a conclusion that the patent issuing from this application is subject to a terminal disclaimer.

A review of the application history reveals that the response at issue was mailed with a certificate of mailing on November 20, 2001 but was not received by the Patent Office until January 15, 2002. Given these circumstances, applicant's attention is directed to the OG Notice dated January 15, 2002 (1254 OG 92), which provided that:

If a reply to an Office action or notice was mailed on or after October 13, 2001 and no later than December 1, 2001 (as shown on a certificate of mailing under 37 CFR 1.8), and the applicant is otherwise entitled to patent term adjustment (or additional patent term adjustment) but for the fact that there was a reduction of such patent term adjustment under 35 U.S.C. 154(b)(2)(C)(ii) and 37 CFR 1.704(b) due to the receipt of such reply by the Office more than three business days after the date indicated on the certificate of mailing, the Office will consider the USPS mail situation discussed in this notice to constitute a sufficient showing that, in spite of all due care, the applicant was unable to reply to the Office action or notice within three months of the date of mailing of the Office action or notice. In this situation, the Office will, subject to the conditions set forth below, reinstate a period equal to the period beginning on the date that is four business days after the date indicated on the certificate of mailing on the reply and the date of receipt (37 CFR 1.6) of the reply in the Office up to a maximum of three months.

The relevant reply to the Notice mailed September 20, 2001 was mailed on November 20, 2001, as shown by the certificate of mailing under § 1.8 thereon. However, the patent term adjustment was reduced because the reply was not received in the

¹ PALM records indicate that the issue fee payment was received on March 22, 2004.

Office until January 15, 2002. In addition, the Office entered the date of March 15, 2002 as the date the application was considered complete in response to the Notice and used that later date in calculating the 85-day reduction of patent term adjustment.

Thus, it is concluded that the Notice dated January 15, 2002 is applicable to this situation; in spite of all due care, applicant was unable to reply to the Notice to File Missing Parts within three months of the date of mailing of the notice. It is further concluded that applicant has met the other conditions set forth in the Notice for reinstatement of patent term. In this instance, the period of reinstatement begins on November 27, 2001, the day that is four business days after November 20, 2001, and ends on January 15, 2002, the date of receipt of the reply. This period of reinstatement is 50 days.

In addition, the response received on January 15, 2002, was a complete response. There was no delay until March 15, 2002, in providing a complete response. Thus, a period of reduction covering the period from January 15, 2002 to March 15, 2002, should not have been entered. This period equals 59 days.

In view thereof, the entire period of reduction associated with delay in responding to the Notice to File Missing Parts of Application of 85 days is being corrected to a period of reduction of 0 days.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is forty-seven (47) days.

It is further noted that applicants have met the requirements set forth in the Notice for waiver of the fee for consideration under 37 CFR § 1.705. Accordingly, the \$200.00 fee under 37 CFR 1.18(e), although authorized, will not be charged to their Deposit Account.

The Office of Patent Publication has been advised of this decision. The application is, thereby, forwarded to the Office of Patent Publication so that the patent can be issued. The patent term adjustment indicated on the patent will include any patent term adjustment accrued for Office delay in issuing the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Attachment: Copy of Revised PAIR Screen